



**CITY OF SUMTER, SOUTH CAROLINA**

#03-15/16 Request for Proposals  
Flood Recovery Project Management Services

Date: March 9, 2016

Pre-Proposal Meeting: Tuesday, March 22, 2016 at 2:00PM EST

Response Deadline: Thursday, March 31, 2016 at 2:00PM EST

City of Sumter  
21 N. Main Street, 4th Floor  
Sumter, SC 29150

Deadline to Request Additional Information and Ask Questions:  
Friday, March 24, 2016 at 4:00PM EST

Questions Should Be Directed to:  
Alice C. Bailey, Purchasing Director  
By E-mail Only to [abailey@sumter-sc.com](mailto:abailey@sumter-sc.com)

## **#03-15/16 REQUEST FOR PROPOSALS FLOOD RECOVERY PROJECT MANAGEMENT SERVICES**

### **OVERVIEW**

**Proposals will be received by the City of Sumter, South Carolina**, for the above titled project. This solicitation is a Request for Proposals (RFP).

**Submission Deadline; Pre-Proposal Conference.** Proposals must be received no later than 2:00PM EST on Thursday, March 31, 2016 via electronic submission. In order to insure that all prospective proposers have sufficient information and understanding of the City's needs, a Pre-submittal Conference will be held on Tuesday, March 22, 2016 at 2:00PM EST in the City of Sumter's City Hall, 4<sup>th</sup> Floor Council Chambers, 21 N. Main Street, Sumter, South Carolina 29150.

**Submission.** Proposals must be submitted electronically as discussed further below in Section V.D below. The City will not accept hard copies of proposals.

**Selection.** The City of Sumter will conduct a formal selection process to determine the best qualified proposer that meets the City's needs and budget. A selection committee will review, evaluate, and score the proposals. One or more top scoring firms will be short-listed and invited to interview for the project.

**Agreement.** The City anticipates entering into a contract with one firm who submits the proposal judged to be most advantageous to the City. The selected firm shall be required to sign a formal agreement (the "Agreement"). The proposer understands that this RFP does not constitute an agreement or a contract with the proposer. A proposal is not binding until proposals are reviewed and accepted by the City Council of the City and the Agreement is executed by both parties.

**Development Costs.** The City shall not be liable for any expense incurred in connection with preparation of a response to this RFP. Proposers should prepare a straightforward and concise description of the proposer's ability to meet the requirements of the RFP.

**Reserved Rights.** The City reserves the right to accept or reject any and/or all proposals, to waive irregularities and technicalities, and to request resubmission. The City shall be the sole judge of whether any proposal and/or the resulting Agreement is in its best interest, and its decision shall be final. The City reserves the right to accept or reject all or any part of a submission, if it is deemed in the best interest of the City. The City, in its sole discretion, may expand the scope of work to include additional requirements. The City reserves the right to investigate as it deems necessary to determine the ability of any proposer to perform the work or services requested. Each proposer, upon request, shall provide such information as the City deems necessary in order to make a determination.

### **I. GENERAL PROCUREMENT INFORMATION**

The RFP is not a bid. In the event that the City is willing and able to negotiate an agreement with the successful proposer (hereinafter referred to as the "Consultant"), the Agreement shall contain, at a minimum, the terms and conditions (or substantially the same terms and conditions) as hereinafter stated. The City reserves the right, in its sole discretion, to reject all submissions, reissue a subsequent RFP, terminate, restructure, or amend this procurement process at any time. The final selection and contract negotiation rests solely with the City. It is the sole responsibility of each proposer to gather adequate information, review collateral documents, and make those inquiries that are necessary and

prudent as to the project. The proposers are not entitled to rely on the City or the City's representations or information to the exclusion of the proposer's due diligence.

No questions may be directed to or contacts made with the Mayor, other members of City Council, the City Manager, and other City staff not identified in this RFP as points of contacts during the period of time that this RFP is made public until the final selection is made, except as otherwise provided for herein. Violation of this prohibition may disqualify the proposer from further consideration.

Any requests for additional information or questions concerning the procedures specified in this request should be directed to Alice C. Bailey, Purchasing Director, via email only to [abailey@sumter-sc.com](mailto:abailey@sumter-sc.com), with Flood Recovery RFP in the subject line.

The City will not accept telephone calls or visits regarding this RFP. No interpretation shall be binding unless in writing from the City of Sumter.

All questions must be received by Friday, March 24, 2016 at 4:00PM EST.

## **II. INTRODUCTION**

From October 2nd through 4th, 2015, over twenty inches of rain overwhelmed the City and its sewer and storm water systems. Debris from the flood entered into and backed up catch basins throughout the City. As a result of water and sewer main breaks and extensive street damage, the City instituted a boil water advisory that affected over 25,000 water customers and 17,000 sewer customers. Approximately 75 roads were closed, either from being washed away or made impassable by flooding. The City also experienced manhole overflows and infiltration of storm water into the sanitary sewer lines.

Swan Lake Dam suffered a major breach. The normal level of Swan Lake averages around 6½ feet; however, the post event level is only 1½ feet. Swan Lake Iris Gardens and Park suffered significant damages to many of the facility's walking trails, buildings, equipment, supplies, and its infrastructure.

The Sumter Fire Department's Training Facility was completely flooded. Nearly 4 feet of water inundated the facility, causing significant building damages and police/ fire contents and equipment losses including computers, two-way radio equipment, personal protective equipment, safety gear, and uniforms. The Sumter Police Department lost 7 fully accessorized patrol vehicles during flood response operations.

A number of City-owned buildings, including the Opera House, were damaged when excessive rain breached roofs causing damage to ceilings, insulation, drywall, and carpet. Riley Park, Palmetto Park, and Shaw Skate Park all sustained significant damages.

Beyond such damage to City-owned infrastructure, the community suffered extensive damage to property. Although the City has not yet collected full data on the community impact of the flooding, the City's building department has issued nearly 300 flood-related building permits for almost \$5 million in work. Given that many homeowners do not have the means to undertake repairs, it is safe to assume that total private losses are far in excess of the amount currently known by the City.

In an effort to identify and implement post-disaster recovery measures, the City of Sumter is seeking proposals from qualified proposers to assist current staff in successfully navigating the multifaceted challenges incurred as a result of the flooding events. Specifically, the City is seeking a disaster recovery

project management team to provide project management services to include, but not be limited to: (A) Post-Disaster Consulting / Grants Management and Administration, (B) HUD Community Development Block Group Disaster Recovery Support Services, (C) FEMA 404 and 406 Hazard Mitigation Expertise, (D) Financial and Grant Management Support, (E) Information Technology, Data Management and Reporting Support, (F) Disaster Recovery Engineering Related Services Support, and (G) Disaster Recovery Procurement and Contracts Support Services.

All responsive proposals must complete and submit all documents as required and outlined in **Section V**.

### **III. SCOPE OF SERVICES**

The City has limited experience in disaster recovery in general and federal procurement requirements in particular. Therefore, **the successful proposer will be required to assist the City in ensuring that the Agreement complies with all applicable federal and state laws and regulations**, including without limitation the procurement laws and regulations applicable to HUD and FEMA.

In addition, the scope of services shall include, but may not be limited to, the following tasks to be performed by the successful proposer, if any (hereinafter referred to as the “Consultant”):

#### **A. Post-Disaster Consulting / Grants Management and Administration**

The Consultant shall work with various funding agencies and City departments to ensure the proper use of and application for federal and state funds, with a focus on maximizing eligible and allocable federal dollars. The Consultant shall create an efficient process to reduce the timeline for eligibility determinations; provide technical knowledge and experience, proven business processes, and policy strategies; and perform services and work necessary to complete the following objectives and tasks:

1. Develop a document management plan that provides for the structure, content, and management of all recovery project documentation consistently within City departments.
2. Maintain complete and accurate records concerning all applicable grant programs.
3. Prepare and coordinate the development of project worksheets as required, including project development, formulation, and processing.
4. Prepare, submit, and track Hazard Mitigation Grant program applications as required, including project or program development, formulation, processing, and monitoring.
5. Provide grant management advice to maximize reimbursements of disaster recovery expenses.
6. Review eligibility issues for the City and develop justifications for presentation to the federal agencies, state agencies, and other agencies involved in providing disaster recovery funds.
7. Compile, summarize, and justify costs for presentation to federal agencies and state agencies for reimbursement of eligible costs, ensuring compliance with applicable regulations.
8. Work with the City departments and divisions to obtain all costs and necessary backup documentation to develop, revise, and submit project worksheets and grant applications to the federal agencies and state agencies to be approved, obligated, and reimbursed.

9. Prepare and present appeals, as necessary.
10. Ensure that all eligible damages have been identified, quantified, and presented to the City, federal agencies, and state agencies. All eligible damages shall be incorporated into project worksheets and grant applications with supporting documentation and proper cost estimates, using the FEMA Cost Estimating Factor (CEF) when necessary.
11. In coordination with City engineers, provide or retain the services of professional experts to prepare damage assessments and technical reviews and oversight in the furtherance of program objectives.
12. Review contracts, bid documentation, change orders, and other records to support the proper preparation and presentation of project worksheets, grant applications, and eligible activities.
13. Attend meetings with the City, federal agencies, and state agencies to negotiate and represent project worksheets and the obligation of eligible amounts. Provide advice to City personnel and consultants.
14. Provide the City with any required or recommended changes in policies, procedures, processes, or deadlines throughout the financial disaster recovery process.
15. Prepare and conduct the close-out process, ensuring maximum recovery and retention of all eligible funding, satisfactory disposition of appeals, and availability of supporting documents for future audits.
16. Prepare for and respond to inspections and audits for on-going and completed projects.
17. Assist staff in preparing formal audit responses and justifications; attend associated meetings and hearings as needed.
18. Track and monitor consultant's own time and activities by project, or as allowable under the provisions of federal guidance for direct administrative, indirect, and project management costs.
19. Provide written performance and status reports to City on the status of the FEMA Public Assistance program and other grant programs as requested. The performance and status report should include, but is not limited to, the following:
  - Track hours billed and amount invoiced by personnel.
  - Track amounts awarded to City per project worksheet and grant application.
  - Track and report estimated and actual costs.
  - Track and report reimbursements received by City.
  - Monitor, track, and report insurance deductions.
  - Provide closeouts of project worksheets and grant applications.

## **B. HUD Community Development Block Group Disaster Recovery Support Services**

Specific tasks include:

1. Provide technical assistance to the City to identify eligible CDBG activities under 24 CFR 570 and national objectives that may be modified or waived under federal allocation of the CDBG-DR funds.
2. Develop unmet needs assessments that identify type(s) and location(s) of the community's disaster recovery needs, especially in the three core aspects of recovery (housing, infrastructure, and the economy).
3. Provide technical assistance with HUD (Housing and Urban Development) level environmental reviews and clearance and other federal requirements such as procurement, federal labor standards, Davis Bacon, fair housing, accessibility, uniform administrative requirements, relocation, and monitoring and compliance.
4. Provide technical assistance development and submission of the HUD-required Action Plan for disaster recovery, action plan amendments, performance reporting, and grant closeout.
5. Assist with project management and operations on CDBG-DR funded programs and activities including contractor, subcontractor, and sub-recipient oversight and monitoring.
6. Provide technical assistance maintaining project files with supporting documentation for all CDBG-DR funded activities that meet HUD's regulatory requirements.
7. Provide technical assistance to the client on HUD's Disaster Recovery Grant Reporting (DRGR) data management system including action plan set-up and quarterly reporting.
8. Provide technical assistance or cost reconciliation services related to HUD's requirements for infrastructure and public facilities including FEMA PA match programs.
9. Provide technical assistance on HUD's requirements for economic development activities.
10. Provide technical assistance on HUD's requirements for calculating duplication of benefits in compliance with the Stafford Act.

## **C. FEMA 404 and 406 Hazard Mitigation Expertise**

Specific tasks include:

1. Assist in identifying, developing, and evaluating opportunities for hazard mitigation programs to reduce or eliminate risk from future events.
2. Provide experienced hazard mitigation staff to identify and prepare hazard mitigation proposals, grant applications, benefit cost analysis, and other services related to Hazard Mitigation Grant Program, Pre-Disaster Mitigation, and other mitigation programs.

## **D. Financial and Grant Management Support**

Specific tasks include:

1. Direct administrative costs to facilitate reimbursement for all eligible client costs, including contractor costs.
2. Provide general grant management advice.
3. Work with staff on conducting pre-audit activities and preparing documentation for audit.
4. Along with staff, meet as necessary with City, county, state, and federal representatives in connection with the programmatic, financial, contracting, and accounting services necessary to meet all applicable regulations.
5. Prepare reports for the State and FEMA, as needed.
6. Provide oversight of contractors' bills to ensure that they invoice properly and are compensated only for work actually performed, and that all costs eligible for the disaster grant funding are documented and claimed.
7. Categorize, record, track, and file costs in support of the financial reimbursement process.
8. Track project worksheet status and status of payment from the State and FEMA.

## **E. Information Technology, Data Management and Reporting Support**

Specific tasks include:

1. Provide expertise in using systems to report information to assist in the management of the disaster recovery programs.
2. Provide expertise to analyze data and information for process improvement and optimization.

## **F. Disaster Recovery Engineering Related Services Support**

Specific tasks may include:

1. Design services or assistance in securing design services to include the following activities:
  - a. Assist the City in reviewing proposed projects and determine options associated with moving forward with project completion to help identify the best procurement method for each specific project.
  - b. Procure professional services for projects according to agreed-upon methods and the City's procurement code.
  - c. Prepare preliminary project construction cost estimate.

- d. At the City's request, prepare conceptual repair estimates that may assist with FEMA funding obligation. Such estimates may include the cost to implement an exact replacement, repair versus replace comparisons, etc.
2. Construction activities or assistance in securing contractors or construction administration support to include the following activities:
  - a. Prepare preliminary project construction cost estimates.
  - b. Prepare bid packages (to include all City procurement requirements as well as all FEMA or other necessary regulatory agency guidelines) and assist with the bid process to include all activities involved through the City Manager or City Council approval, as deemed necessary by the City's procurement guidelines.
  - c. Provide or assist in securing construction administration services to assist in the inspection of projects that are underway. Ensure compliance with all applicable FEMA requirements for inspection of work being performed.
  - d. Review pay applications to ensure all applicable information is obtained to satisfy all applicable requirements, to include but not limited to City and FEMA requirements.
  - e. Assist with the project close-out process to ensure all requirements of the project are satisfied and the project is complete.
  - f. At the City's request, prepare conceptual repair estimates that may assist with FEMA funding obligation. Such estimates may include the cost to implement an exact replacement, repair versus replace comparisons, etc.

## **G. Disaster Recovery Procurement and Contracts Support Services**

The Consultant must also provide support and project expertise to the City's procurement staff. The successful proposer should have a procurement or contract specialist with experience in disaster recovery and continuity of operational efforts post-event. The successful proposer will support and assist City staff in crafting complete and detailed solicitations, identifying available resources, and utilizing appropriate sourcing methods, tools, and vendor selection. Additional experience in successful contract negotiation techniques, processing emergency and sole source procurements, and other source selection methods is preferred.

In addition to exemplary disaster recovery procurement and contracting experience, the Consultant should have experience in the following:

1. Working with federal contracts and procurements under grants by Non-Federal Entities Other than States (2 CRF Sections 200.318-326 and Appendices; and all other applicable requirements under the federal Uniform Rules).
2. Performing independent price and cost analysis.
3. Applying generally acceptable standards to strongly encourage inclusivity to include encouraging participation in the bid process by qualified small, women, minority and historically underutilized firms and businesses.



4. Crafting detailed solicitations/proposals for complex goods and services procurement projects.
5. Identifying and utilizing the appropriate sourcing tools, resources, and techniques to achieved desired results.
6. Validating contractors' change orders and tracking status of contract deliverables.
7. Ensuring that contractors and vendors are in compliance with legal requirements, owner specifications, and all applicable state, local, and federal governmental regulations.
8. Coordinating with other local and state jurisdictions in disaster recovery efforts.
9. Applying statutory/regulatory procurement rules and regulations to meet the specific requirements of the governmental entities.

#### **IV. SCHEDULE FOR COMPLETION OF SERVICES**

Time is of the essence. The City of Sumter requests that the successful proposer demonstrate a proven record of meeting critical deadlines for services substantially similar to the services outlined in this scope of services.

#### **V. RESPONSE REQUIREMENTS AND SUBMITTAL FORMAT**

##### **A. Submittal Format; Evaluation Criteria**

Proposers shall prepare their proposals using the format outlined below:

In completing the Consultant Evaluation Form, proposers must include the following information:

1. Proposer's Organization, Management, and General Qualifications. Multiple firm or joint-venture teams should clearly identify the roles and responsibilities of the proposed participants. Team and project management structure should be documented. The principal within the prime firm responsible for the project should be identified and a statement presented that those persons would not be substituted without the express permission of the City. Firm(s) should demonstrate experience in previous disaster recovery grant management service projects (including both FEMA and HUD). Individual Qualifications. Proposers should identify and describe the qualifications of key personnel to be involved in the Agreement; describe previous experience of such key personnel in similar or related work; and list the position titles and the number of support personnel available that will work under the Agreement. Proposers should provide information indicative of experience in other projects of similar complexity that demonstrates successful and reliable experience in past performance within the last five (5) years, as it relates to this RFP. One project reference must have been started within the last 18 months.

2. References. A reference list for each proposer is required, to demonstrate the proposer's long term commitment and investment in the emergency disaster services field; including a current list of clients, type of contract and dollar amount, with contact name, project, and telephone number. In addition, proposers should provide a specific reference list for the key personnel proposed to work under the Agreement, identifying name, project, and telephone number.

3. Approach and Methodology. Proposers should demonstrate their understanding of (1) the scope of services required for FEMA and HUD grant management services; (2) how these services affect the community and the economic impact; (3) the need to work with City officials and the community; and (4) the need to design the best plan to maximize funding for the City's needs

4. Proposed Fee Schedule and Cost Proposal. Proposers must include a detailed cost analysis including projected budgeted hourly rates and estimated reimbursable cost.

## **B. Instructions for Questions**

No interpretations or clarification of the meaning of the instructions or scope of services will be allowed orally (except for general information). Every request for such interpretation should be e-mailed to Alice C. Bailey, Purchasing Director for the City of Sumter, at [abailey@sumter-sc.com](mailto:abailey@sumter-sc.com) no later than Friday, March 24, 2016 at 4:00PM EST. Any and all such interpretations and any supplemental instructions will be issued in the form of written addenda to the Request for Proposals.

## **C. Public Opening**

Electronic Submissions will be received by the City of Sumter until the time and date shown below (local prevailing time). All submissions must be delivered on or before Thursday, March 31, 2016 at 2:00PM EST.

## **D. Instructions for Submitting a Proposal**

Only electronic submissions will be accepted. Proposers may upload proposals by visiting the following URL: <http://www.sumtersc.gov/submit-rfp.aspx> - Only files in .pdf, .xls, or .doc formats will be accepted. Printing shall be enabled on files submitted. The RFP # and Name must be included on the web RFP form and all attached documents at time of submittal. In the event of technical difficulties in submitting proposals, proposers should contact the City's Purchasing Director, Alice Bailey, at 803.436.2587 or by email to [abailey@sumter-sc.com](mailto:abailey@sumter-sc.com).

## **E. Ownership of Proposal Documentation**

Upon receipt of proposals by the City, such proposals and all included documentation shall become the property of the City, without compensation to the proposer, for disposition or usage by the City at its discretion. The City assumes no responsibility or obligation to proposers and will make no payment for any cost associated with the preparation or submission of proposals.

## **F. Confidential Information**

All inquiries or correspondence relating to or in reference to this RFP and all proposals submitted shall become the property of the City when received and is subject to the provisions of the Open Records Act, the details of the proposal documents will remain confidential until final award. Unless required by law, proprietary or financial information submitted by a proposer will not be disclosed if proposer visibly marks each part of the proposal which proposer considers to be confidential or proprietary information with the word "Confidential."

## TECHNICAL PROPOSAL

The Technical Proposals will be evaluated against a set of criteria to determine the firm most qualified and suited for this project and whose proposal is deemed to be in the best interest of the City. The evaluation includes a mandatory pass-fail criteria and technical qualifications that will be evaluated by the Selection Committee. Factors to be considered in the evaluation of the Technical Proposals include:

- Prerequisite Criteria – Firms must meet the Requirements and Instructions. Firms are advised to familiarize themselves with current requirements for licensing and bonding of public projects in South Carolina. Firms that do not meet these criteria are **automatically disqualified** from further evaluation. Provide documents, including affidavits from insurance and surety agents, attesting to your firm's compliance with the prerequisite criteria listed below.
  1. Firm **MUST** demonstrate that appropriate worker's compensation and liability insurance coverage for this project can be obtained from a firm or firms licensed in the State of South Carolina.
  2. Firm **MUST** demonstrate that other insurance as required for this project can be obtained from a firm or firms licensed in the State of South Carolina.
  3. Firm **MUST** demonstrate that a payment and performance bond for the total cost of the work can be obtained from a firm or firms licensed in the State of South Carolina. The bonding firms must have an "A" minimum rating of performance as stated in the most current publication of "Best Key Rating Guide, Property Liability", which company shows a financial strength rating of at least five (5) times that portion of the anticipated services that does not include operations, maintenance, and finance.
  4. Firm or any component firm of a joint venture **MUST NOT** appear on the Federal Government's Excluded Parties List System or in any debarment list maintained by any State or entity of South Carolina. A notarized affidavit to this effect shall be provided.
- Technical Merit Criteria - For those responses that have met the Prerequisite Criteria, the Selection Committee will evaluate the submittals based upon the general criteria listed below and explained in further detail in the Submittal Conditions, Requirements and Instructions. The City has established the relative importance of each element and sub-element of the criteria and has listed them in descending order of relative importance.
  - I. Qualifications and Experience: (40 Points)
    - A. The Proposer. Proposer(s) should demonstrate experience in previous disaster recovery grant management service projects (including both FEMA and HUD)
      - i. Past experience with similar projects
      - ii. Previous Grant management reimbursement experience
      - iii. Multiple firm or joint-venture teams should clearly identify the roles and responsibilities of the proposed participants
    - B. Personnel Assigned to Project. Proposers should identify and describe the qualifications of key personnel to be involved in the Agreement
      - i. Depth of Personnel Resources with relevant experience
      - ii. Qualifications and Experience of the Proposed Project Team

- iii. Principal within the prime firm responsible for the project should be identified
- iv. Describe additional previous experience of such key personnel in similar or related work with similar projects
- v. Experience of Project Manager
- vi. List the position titles and the number of support personnel available that will work under the Agreement

#### C. Potential Conflicts of Interest

D. Past Success/Reliability. Proposers should provide information indicative of experience in other projects of similar complexity that demonstrates successful and reliable experience in past performance within the last five (5) years, as it relates to this RFP

- i. Business Related Claims
- ii. Percentage of approved and paid claims vs. total claims submitted
- iii. Timeliness of submittals and Reimbursement Record of the Firm

2. References. (30 Points) A reference list for each proposer is required, to demonstrate the proposer's long term commitment and investment in the emergency disaster services field; including a current list of clients, type of contract and dollar amount, with contact name, project, and telephone number
  - i. Specific reference list for the key personnel proposed to work under the Agreement, identifying name, project, and telephone number
  - ii. Past performance record
  - iii. Number and size of similar projects completed in the last five years
  - iv. One similar project started in the last 18 months
3. Approach and Methodology. (20 Points) Proposers should demonstrate their understanding of (1) the scope of services required for FEMA and HUD grant management services; (2) how these services affect the community and the economic impact; (3) the need to work with City officials and the community; and (4) the need to design the best plan to maximize funding for the City's needs
  - i. Grant management tasks, eligibility, allowability, engagement, and closeout process
  - ii. Understanding scope of work
  - iii. Adequacy of proposed personnel, with the right experience to speed up the job, if necessary
4. Proposed Fee Schedule and Cost Proposal. ( 10 Points) Proposer(s) must include a detailed cost analysis including a projected budgets hourly rates, and estimated reimbursable cost.

## VI. SELECTION PROCESS

### A. Acceptance and Rejection

Any proposals that do not conform to the essential requirements of the RFP shall be rejected. The City reserves the right to waive informalities and minor irregularities in submittals and reserves the sole right to determine what constitutes informalities and minor irregularities. The City also reserves the right to

accept or reject any or all proposals received in response to this RFP and to negotiate separately with competing proposers. The City is not obligated to enter into any agreement on the basis of any submittal in response to this RFP. The City reserves the right to request additional information from any firm submitting under this RFP if the City deems such information necessary to further evaluate the firm's qualifications. Failure to provide additional information in timeline required by the City may disqualify the Proposer from further consideration.

The evaluation committee shall be comprised of City employees. They will review each submittal based upon the criteria listed herein. The written evaluation will produce a list of the top rated proposals that will be selected for possible interviews (short list). Proposers may or may not be interviewed and the City reserves the right to conduct interviews at its sole discretion. Oral interviews, if necessary, will be conducted in order to make a final decision. The short listed consultants will be contacted via telephone or e-mail by the City to determine their interview date and time. Proposers should plan to have available, in person, key personnel who will be assigned to work on the proposed project. Individuals who fail to attend the interview may not be given a score which could jeopardize the firm's competitiveness. If awarded the project, all interview statements will become part of the final Agreement.

## **B. Selection / Award Criteria**

It is to the sole discretion of the City to determine the award method. Awards will be made to the highest ranked, responsive and responsible proposer whose offer is determined to be the most advantageous to the City. Awards may be made by individual categories and/ or complete lot(s).

Proposals must be responsive to the requirements stated herein.

The City will place the top-rated firms on a short list and may request an interview phase. Scoring for interviews, should they be used, will be on a separate scale (in addition to the 100 point proposal review scale). The City reserves the right to hold interviews in addition to proposal document review in order to select a top ranking firm if it is determined to be needed.

In the event the City elects to proceed to the interview phase, the following scoring will be used:  
(25 Points Total)

### Interview Criteria

- What solutions does the team present, and how realistic are they? (5 Points)
- Does the firm's team give direct answers to the questions asked, or do they avoid them or try to steer the discussion? (5Points)
- Does the firm seem more interested in potential future projects than in current project? (5Points)
- Does the firm seem open-minded in their approach? Is the firm's team good listeners? Do they ask relevant, thoughtful questions? (5Points)
- How cohesive does the firm's team work together during the presentation & interview? (5Points)

The purpose of the interview will be to meet the proposed Project Team, to become familiar with key personnel, and to gain a full understanding of the proposer's project approach and ability to meet the stated objectives for the Project. Firms should be prepared to discuss with specificity the firm's capacity to conduct this work in compliance with the City's timetable, scope and budgetary goals. Firms

should focus their presentations on the detailed plan for managing the cost, schedule, and quality on the project and any unique characteristics or services the firm offers and their value to the City for this specific project.

Firms are discouraged from reviewing company history and experience presented in the Technical Proposal unless this information is relevant to the project-specific management plan. All key project personnel shall be present at the interview, including at a minimum the project superintendent, project manager, project director, lead cost estimator, and project executive. Firms should plan the allotted presentation time to address all elements listed below:

- Overall impression of key team members (project manager, project director, cost estimator, project executive, etc.)
- Methodology presented to assure success
- Ability of team members to communicate during the interview process
- Ability to effectively answer questions and problem solve in meeting
- Overall impression of the firm

Once interviews are complete, the Committee will do a final evaluation and ranking of short-listed firms using the stated evaluation criteria. Provided that the cost proposal of the highest-ranked offeror conforms to the requirements of the RFP and presents a fair and reasonable price for the services required, the Committee will proceed with the award process.

It is anticipated that the submitted proposals will be evaluated and the top ranking firm will enter the contract negotiation stage. Negotiations will be entered into with the highest ranked firm in an effort to confirm a pricing structure that is acceptable to all and address any questions remaining after the selection process. If an appropriate Agreement can be successfully negotiated between the parties, it will be executed by the City Manager after approval by City Council. If a successful Agreement cannot be negotiated with the highest ranked firm, negotiations will be undertaken with the next firm in order of ranked preference.

The RFP does not commit the City to pay for direct or indirect costs. Any costs associated with RFP preparation, pre-bid conferences, selection interviews, and any other consultant activity prior to award of the Agreement shall be at the proposer's expense.

## **VII. GENERAL INFORMATION AND INSTRUCTIONS**

### **A. Acceptance Period**

Any proposal in response to this solicitation shall be valid for one hundred and twenty (120) calendar days. At the end of this time the proposal may be withdrawn at the written request of the proposer if no award has been made. If the RFP is not withdrawn at that time, the proposal in its entirety, including the price structure, shall remain in effect.

### **B. Contract (Agreement)**

Upon award of the Agreement by the City, the Consultant shall agree to deliver services in accordance with the terms and conditions set forth therein and any negotiations that may occur. Consultant shall understand that minor technical adjustments may be necessary as work progresses. Timely, quality service is critical to continuation of work under this Agreement.

Proposed terms and conditions are included (see Section VIII). All responders should thoroughly review

prior to submitting a proposal. Any proposed revisions to the terms or language must be submitted in writing with the proposer's response to the Request for Proposal within the Cover Letter. The certification contained herein shall be signed by an officer of the proposer having authority to execute the Agreement.

### **C. Anticipated Schedule of Events**

Proposal Issue Date	Thursday, March 9, 2016
Pre-Proposal Meeting	Tuesday, March, 22, 2016
Last Day for Questions	Friday, March 24, 2016
Proposal Due Date	Thursday, March 31, 2016
Interviews (If required)	April 7-11, 2016
Negotiations	April 12-15, 2016
Council Approval	Tuesday, April 19, 2016
Tentative date for Kick-off Meeting & issuance of Notice to Proceed	Wednesday, April 20, 2016

The Pre-Proposal meeting will be held Tuesday, March 22, 2016 at 2:00PM EST in the City of Sumter's City Hall, 4<sup>th</sup> Floor Council Chambers, 21 N. Main Street, Sumter, South Carolina 29150. A conference call will be used for consultants who are unable to physically attend the meeting; however the number of available ports is limited. These will be utilized on a first come first serve basis. A telephone number and access code will be provided upon request to proposers who are unable to attend.

### **D. Confidentiality**

Unless otherwise required by law, and until after award of a proposal, all information, materials, and other documents submitted by a proposer shall not be released or made available to any person or entity except City representatives assisting in this procurement process. Unless required by law, proprietary or financial information submitted to the City by a proposer will not be disclosed if the proposer visibly marks each part of the proposal that the proposer considers confidential, financial, or proprietary information with the word "Confidential."

### **E. Proposer's Duty to Inspect, Advise, and Declare All Costs**

Each proposer shall become fully acquainted with the City's requirements and the scope of the services to be provided. Proposers have a duty to request any information from the City as they deem necessary to prepare the RFP. No change order will be granted or additional compensation permitted if it is based upon information that the proposer knew, or should have known, as part of the proposer's duty to become acquainted with the City's circumstances and requirements.

### **F. Time for Receiving Proposals**

Proposals submitted online prior to the time of opening will be encrypted and kept unopened. The official whose duty it is to open them will decide when the specified time has arrived, and no bid thereafter will be considered.

### **G. Cancellation of Proposals**

Proposals may be withdrawn prior to the time fixed for Proposal closing if requested in writing. Negligence on the part of the proposer in submitting the proposal confers no right for the withdrawal of

the proposal after it has been opened.

## **H. Ambiguous Proposals**

Proposals which are uncertain as to terms, compliance to requirements and/or specifications shall be rejected.

## **I. Conflict of Interest**

Proposers must describe, in the electronic proposal, all potential conflicts of interest for any prospective business association, interest, or other circumstance, which may influence or appear to influence the proposer's judgment or quality of services being provided hereunder. Such notification shall identify the prospective business association, interest, or circumstance; the nature of work that such a person may undertake; and a request for an opinion of the City as to whether the association, interest, or circumstance would, in the opinion of the City, constitute a conflict of interest. By submitting a proposal, the proposer certifies that it has no conflict of interest with any employee, agent, elected official or officer of the city or any other conflict except as described in the proposal.

## **J. Collusion**

More than one proposal from an individual, firm partnership, corporation, association, or related parties under the same or different names will not be considered. If the City believes that collusion exists among proposers, all proposals from the suspected firms will be rejected. "Related parties" means proposer or the principals thereof, which have a direct or indirect ownership or profit sharing interest in another proposer.

Proposers shall comply with all local, state, and federal directives, orders, and laws as applicable to this RFP and any resulting agreement.

By responding to this RFP, proposers certify that the response is made without previous understanding, agreement, or connection with any person, firm, or corporation making a proposal for the same item, and they acknowledge that this would constitute an illegal action.

## **K. Protest Procedures**

1. Right to protest: Any actual or prospective proposer or subcontractor who is aggrieved in connection with the solicitation or award of the Agreement may protest to the appropriate procurement officer. The protest setting forth the grievance shall be submitted in writing within five (5) days after such aggrieved persons know or should have known of the facts giving rise thereto, but in no circumstance after 10 days of notification of the award of the Agreement.
2. Authority to resolve protests: The appropriate procurement officer shall have the authority, prior to the commencement of an administrative review as provided in this article, to settle and resolve a protest of an aggrieved proposer or subcontractor, actual or prospective, concerning the solicitation or award of the Agreement. This authority shall be applied in a manner consistent with regulations or laws governing the procurement of supplies, services, and construction for the City.
3. Decision: If the protest is not resolved by mutual agreement, the appropriate procurement officer shall issue a decision in writing within 10 days. The decision shall state the reasons for the action taken.



4. Notice of decision: A copy of the decision under Number 3 above of this section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.
5. Finality of decision: A decision under Number 3 of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a review in writing, setting forth the grievance to the City Manager within 10 days of the decision. The protestant may also request an interview with the City Manager.
6. Request for review. The request for a review shall not stay the agreement unless fraudulent.

## **VIII. TERMS AND CONDITIONS**

The following terms and conditions shall be included in the Agreement. As noted in the Scope of Services, Section III, the successful proposer shall be responsible for assisting the City in ensuring that the Agreement, as executed, complies with all applicable federal, state, and local laws. To the extent that any such legal requirements are not listed in the terms and conditions below, proposer shall be deemed to have been on notice that such legal requirements shall be applicable and shall be included in the Agreement.

### **A. Access to Records**

The successful proposer shall make available for examination by the City all of its records with respect to all matters covered by the Agreement and shall maintain such records for a period not less than three (3) years after receipt of final payment under the Agreement or longer if notified by any oversight agency.

In addition, the following access to records requirements apply to the Agreement:

1. The successful proposer agrees to provide the City, the State of South Carolina, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representative(s) access to any books, documents, papers, and records that are directly pertinent to the Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The successful proposer agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The successful proposer agrees to provide the State of South Carolina Representatives, FEMA Administrator or his/her authorized representative(s) access to information pertaining to the work being completed under the Agreement.

### **B. Amendments**

The parties may amend the Agreement at any time provided that such Amendments are executed in writing, signed by a duly authorized representative of both parties, and approved, where applicable, by the City's governing body.

The City may, in its discretion, amend the Agreement to conform with federal, state, or local governmental guidelines, policies, and available funding amounts, or for other reasons. If such

Amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of the Agreement, such modifications will be incorporated only by written Amendment signed by both parties.

### **C. Assignability/Subcontracting**

The successful proposer shall not assign or subcontract any interest in the Agreement and shall not transfer any interest in the same without the prior written consent from the City. The successful proposer shall be as fully responsible to the City for the acts and omission of its partners, joint-ventures, and subcontractors, as it is for the acts and omissions of persons directly employed by the successful proposer.

The successful proposer shall furnish and cause each of its subcontractors to furnish all information and reports required hereunder.

### **D. Breach/Waiver**

The failure of either the successful proposer or the City to insist upon the strict performance of any provision of the Agreement shall not be deemed to be a waiver of the right to insist upon strict performance of such provision or of any other provision of the Agreement at any time. Partial payment by the City shall not be construed as a waiver. Waiver of any breach of the Agreement shall not constitute waiver of a subsequent breach.

### **E. Clean Air Act and the Federal Water Pollution Control Act**

The successful proposer will comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §7401-7671(q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §1251-1387). The successful proposer will report each violation to the City, the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office (EPA). The successful proposer agrees to include these requirements in each subcontract exceeding Twenty Five Thousand Dollars (\$25,000.00) financed in whole or in part with federal assistance provided by FEMA.

### **F. Commencement of Services**

Upon execution of a successful Agreement, a kick-off meeting will be scheduled for proposer to meet with the appropriate City staff members to commence the project. At such date, the Notice to Proceed will be issued.

### **G. Compensation**

The successful proposer acknowledges that FEMA financial assistance will be used to fund the Agreement only. The successful proposer will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

1. The total compensation to be paid by the City to the successful proposer under this Agreement shall be outlined in the Agreement. An itemization of services will be further defined in the Agreement.
2. The successful proposer shall submit invoices no more frequently than monthly for services rendered during each phase of the Project. Each invoice submitted must describe the services

for which payment is requested as shown in the project schedule, show payment calculations, and specify the person(s) rendering such service(s). Each invoice shall bear the signature of the successful proposer, which signature shall certify that the information contained in the invoice is true and accurate and that the invoice amount is currently due and owing. The City will not pay interest or penalty on any past due amount. Each invoice must also clearly identify any portion of the fee invoiced for the services of subcontractors, as specified in the Agreement, and must specify if the subcontractor is a Minority Owned Business Enterprise, Small Business Enterprise, Disabled Veterans Owned Business Enterprise, or Women Owned Business Enterprise.

3. The successful proposer shall make subcontracting opportunities available to a broad base of qualified subcontractors to ensure maximum participation from Disadvantaged Business Enterprises (DBE), to include but not limited to: Minority Owned Business Enterprise, Small Business Enterprise, Disabled Veterans Owned Business Enterprise, and Women Owned Business Enterprise in all disciplines of the project.
4. The successful proposer shall, in performance of the Agreement, only use those subcontractors identified in the successful proposal. Subcontractor substitutions shall be made only with the City's approval. The successful proposer shall enter into agreements with those subcontractors in the same dollar amount upon which the successful proposal was based, prior to award of the Agreement. Such agreements shall be contingent upon award of the Agreement by the City and the City's Notice to Proceed to the successful proposer.
5. With respect to invoicing procedures:
  - a. The City's Project Manager or his/her designee must review all invoices prior to payment.
  - b. The Consultant's invoice must contain sufficient detail by task and resource and should be easily traceable to the work completed on the project schedule. Descriptions used in the project schedule shall match those descriptions contained in the Consultant's invoice.
  - c. The work completed on the Consultant's project schedule must be the basis for full or percentage of completion payments on the Consultant's invoice.
  - d. The Consultant will not request payment for taxes on professional services, labor, or installation fees.
  - e. The Consultant will not invoice or request payment for any equipment or services that may be specified in this contract prior to the delivery of said equipment or performance of said services.
  - f. The Consultant shall adhere to an agreed-upon delivery schedule for equipment and/or services. This is to ensure that the City does not have to pay for the advance delivery of equipment that it was not expecting in that timeframe and/or have to warehouse or make space for unanticipated equipment deliveries. Exceptions to this requirement must be approved by the City in writing.
  - g. All invoices shall include a valid purchase order number on the bill; if emergency purchases are required for any reason before a purchase order number is available, a copy of the emergency request for purchase should accompany the Consultant's invoice.

- h. The Consultant shall name a representative that will be responsible for reviewing all invoicing concerns that the City may have concerning this project.
- i. The Consultant shall submit receipts for all actual expenses.
- j. Failure of the Consultant to follow these invoice requirements will result in the delay of payment of the invoices.

#### **H. Compliance with the Agreement/Agreement Work Hours and Safety Standards Act**

- 1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work that may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- 2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- 3. Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or any subcontractor under the Agreement, any other Federal Agreement with the same prime contractor, or any other federally-assisted agreement subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Consultant or such subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- 4. Subcontracts. The Consultant and each subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

#### **I. Copeland “Anti-Kickback” Act and Davis Bacon Act**

- 1. The successful proposer must comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145) as supplemented by the Department of Labor regulations (29 C.F.R. Part 3 Successful Consultant and Subcontractors on public building or public work financed in whole or in part by loans or grants from the United States). The Act provides that each Successful Consultant or subrecipient is prohibited from inducing, by any means, any person employed in the

construction, completion, or repair of public work, to give up any part of the compensation to which he/she is otherwise entitled. The City will report all suspected for reported violations to the federal awarding agency.

2. The Davis-Bacon Act applies to all projects applicable for Federal-aid construction projects exceeding \$2,000 and to all related subcontracts (regardless of subcontract size). The successful proposer must comply with the 29 C.F.R. 5.5 "Agreement provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

## **J. Duties upon Termination**

Upon termination of the Agreement, the Consultant shall immediately provide the City with all records and data in any format the Consultant is capable of producing and at no cost to the City, which records and data were generated, created, or received by the Consultant in performance of the services required by the Agreement or as the City may deem necessary to perform the required services by the City or the Consultant's successor. All records shall be free from any proprietary claims or interest. The Consultant agrees to fully cooperate with the City and any successor to ensure an effective transition to continuously provide the required services.

## **K. Equal Employment Opportunity (EEOC)**

During the performance of this Agreement, the Consultant agrees as follows:

1. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant will post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, or national origin.
3. The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other agreement or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency

and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the Consultant's noncompliance with the nondiscrimination clauses of the Agreement or with any of the said rules, regulations, or orders, the Agreement may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further government agreements or federally assisted construction agreements in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Consultant will include the provisions of paragraphs (1) through (6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

#### **L. Ethics**

The Consultant and each subcontractor is subject to the provisions of the 1991 Ethics Reform Act (S.C. Code Ann. § 8-13-100, et seq, as amended). Under this Act, a person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent to:

1. Influence the discharge of a public official's, public member's, or public employee's official responsibilities;
2. Influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or
3. Induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official's, public member's, or public employee's official responsibilities. "Anything of value" includes, but is not limited to, lodging, transportation, entertainment, food, meals, beverages, money, gifts, honorariums, discounts, and interest-free loans.

#### **M. Findings Confidential**

All of the reports, information, data, records, or documents of any kind, prepared or assembled by the Consultant under the Agreement are confidential and the Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of the City.

## **N. Indemnification, Hold Harmless, and Insurance**

The Consultant shall maintain the following set forth below for the duration of the Agreement:

1. General Liability. A broad form Commercial General Liability Insurance Policy including, without limitation, a waiver of subrogation endorsement in favor of the additional insureds, and appropriate endorsements adding the following coverages: Premises and Operations Liability;; Personal Injury Liability (with employee and contractual exclusions deleted); Broad Form Property Damage Liability; Broad Form Contractual Liability supporting Consultant's indemnification agreements in favor of the additional insureds; Independent Contractor's Protective Liability; Completed Operations and Products Liability for a period of not less than three (3) years following the date of final payment for all services provided under this Agreement, if insurance is available and affordable. The following coverage limits shall apply:

A. Each occurrence (Bodily injury and property damage)	\$2,000,000
B. General Aggregate	\$5,000,000

2. Excess or Umbrella Liability

A. Each occurrence (bodily injury and property damage)	\$5,000,000
B. General Aggregate	\$5,000,000

3. Automobile Liability

A. Bodily injury	\$1,000,000
B. Property damage	\$1,000,000

4. Workers' Compensation

As statutorily required.

5. Professional Liability. The Consultants shall maintain for the duration of this Agreement, and for a period of three (3) years following Substantial Completion, Professional Liability Errors and Omissions Insurance in an amount not less than \$2,500,000 for each claim and \$5,000,000 aggregate coverage, and shall deliver to Owner a certificate of insurance thereof at the date hereof and upon each renewal thereof, provided it is reasonably available at commercially available rates. If the Consultant fails to furnish and maintain contractually required insurance, the Owner may purchase such insurance on behalf of the Consultant. The Consultant shall furnish to the Owner any information needed to obtain such insurance.

6. Sub-consultants/Partners/Joint Venture. Consultant agrees to require Sub-consultants to comply with the insurance provisions required of Consultant pursuant to this Agreement unless Consultant and Owner mutually agree to modify these requirements for Sub-consultants whose work is of relatively small scope. Consultant agrees that it will contractually obligate its Sub-consultants to advise Consultant promptly of any changes or lapses of the requisite insurance coverages and Consultant agrees to promptly advise Owner of any such notices Consultant receives from its Sub-consultants. Consultant agrees that it will contractually obligate its Sub-consultants to indemnify and hold harmless Owner to the same extent that Consultant is required to do so as provided in this Agreement. Consultant assumes all responsibility for monitoring Sub-consultant contracts and insurance certificates for compliance with the insurance and other provisions of this Agreement until final completion of the Project. The Consultant shall furnish the City with a certificate showing satisfactory proof of insurance and, where applicable, naming the Owner as a listed as additional insured as required hereunder. Such insurance shall be approved by the Owner prior to commencement of work under this Agreement.

7. Notice of Cancellation and/or Restriction. Consultant shall not make changes in or allow the required insurance coverages addressed in this Agreement to lapse without Owner's prior written approval thereto. All policies for insurance must be endorsed to contain a provision giving Owner a thirty (30) day prior written notice by certified mail of any cancellation of that policy or material change in coverage. Should a notice of cancellation be issued for non-payment of premiums or any part thereof, or should Consultant fail to provide and maintain certificates as set forth herein, Owner shall have the right, but not the obligation, to pay such premium to the insurance company or to obtain such coverage and to deduct such payment from any sums that may be due or become due to Consultant, or to seek reimbursement for said payments from Consultant. Any sums paid by Owner shall be due and payable immediately by Consultant upon notice from Owner. Receipt and review by Owner of any copies of insurance policies or insurance certificates shall not relieve Consultant of his obligation to comply with the insurance provisions of this Agreement. The insurance provisions of this Agreement shall not be construed as a limitation on Consultant's responsibilities and liabilities pursuant to the terms and conditions of this Agreement.

8. Bonding. The City has determined that bonding is required for facilities improvement projects per 2 C.F.R. §200.325 and 2 C.F.R. §200.325 (a)-(c). Bonding requirements will include a Performance and Payment Bond at 100% of the fee.

9. Indemnification. The Consultant shall hold harmless, defend, and indemnify the City from any and all claims, actions, suits, charges, and judgments whatsoever that arise out of the Consultant's performance or non-performance of the services or subject matter called for in the Agreement.

#### **O. Independent Consultant/Contractor**

Nothing contained in the Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Consultant shall at all times remain an independent Consultant with respect to the services to be performed under the agreement. The City shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance.

#### **P. Interest of Consultant**

The Consultant will covenant that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under the Agreement or which is adverse to the interests of the City of Sumter. The Consultant will further covenant that in the performance of the Agreement no person having such interest shall be employed.

The Consultant is expected to make its services available to other entities but will agree to refrain from representing other entities in matters in which the position of the City conflicts with that of the other entity. The Consultant has provided a list of all of its clients with whom there may be potential conflicts with the City. This list shall be supplemented throughout the duration of the Agreement.

#### **Q. Licenses, Permits and Taxes**

- I. The Consultant shall be responsible for obtaining any approvals, permits, and/or licenses as may be required of the Consultant in performing the services required under the Agreement. The Consultant shall be responsible for any costs relating to same.



2. The Consultant shall be responsible for identifying and providing any applications and supporting documentation to the City for any approvals and/or permits required of the City in order for the Consultant to perform the services required under the Agreement. Such approvals and/or permits may include, but not necessarily be limited to, SCDHEC Construction Permits, SCDHEC Stormwater Management for Construction Sites Permits, SCDHEC Water Resources Permits, Corps of Engineers Permits, City/County/SCDOT Encroachment Permits, Encroachment Permits for other utility rights-of-way and Railroad Right-of-Way Encroachment Permits/Agreements. The City shall obtain the approvals and/or permits identified by the Consultant and pay any costs relating to same.
3. The Consultant shall answer questions and consult with the City and/or appropriate authorities as necessary to assist the City's efforts in obtaining required permits/approvals.
4. The Consultant shall procure a City of Sumter business license while performing services under the Agreement.

#### **R. Notice**

1. Written notice to the City shall be made by placing by registered mail, return receipt in the United States Mail, postage prepaid and addressed to:

City of Sumter, Attn: City Manager  
21 N. Main Street, 4th Floor  
Sumter, SC 29150

2. Written notice to the Consultant shall be made by registered mail, return receipt in the United States Mail, postage prepaid and addressed to them.

#### **S. Non-Discrimination**

The Consultant will take affirmative action in complying with all federal, state, and local requirements concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, sexual orientation, national origin, or physical handicap.

#### **T. Oversight**

1. The City will maintain oversight to ensure that the Consultant performs in accordance with terms, conditions and specifications per (2 C.F.R. §200.318(b)).
2. The Consultant shall be responsible for performance of all services required by the Agreement. The Consultant does not act as the City's agent or employee.

#### **U. Ownership of Project Documents**

All data, documents, or other information of any description generated by or used by the Consultant or any subcontractor retained by the Consultant and related to the services required by the Agreement shall be the property of the City and shall not be used by the Consultant for any purpose whatsoever except to perform the services required by the Agreement.

## **V. Remedies**

The Consultant shall be entitled only to the actual direct costs of all labor and material expended on the services required under the Agreement prior to the effective date of the termination. In no event shall the Consultant be entitled to anticipatory profit or damages for any termination under the Agreement. In no event shall the Consultant be entitled to assert a claim in quantum meruit or any other measure of damages other than that stated herein.

## **W. Schedule of Completion of Activities**

Time is of the essence. The Consultant shall complete any and all services performed under the Agreement within the timeframes as outlined in the Agreement.

If a 10-working day delay is foreseen, the Consultant shall give thirty (30) days prior written notice to the City. The City has the right to extend a delivery date if the reasons appear, in the sole discretion of the City, to be valid. The Consultant must keep the City advised at all times of status of the project. Default in promised completion times without accepted reasons or failure to meet specifications, authorizes the City to purchase supplies, equipment, or services elsewhere and charge a full increase in cost and handling to the defaulting Consultant.

## **X. Severability**

If any provision of the Agreement is held invalid, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

## **Y. State Law Applicable**

The Agreement shall be construed in accordance with federal, state, local laws, ordinances, and codes in performing the work provided under the Agreement. The Consultant agrees to subject itself to the jurisdiction and venue of the Circuit Courts of Sumter County, State of South Carolina as to all matters and disputes arising or to arise under the Agreement and the performance thereof. The City may seek attorney's fees and the Consultant agrees to pay such fees as awarded by the Court or other body.

The Consultant acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

## **Z. Successorship**

The agreement shall be binding upon the Consultant and upon its successors and assignees.

## **AA. Suspension and Debarment**

The Consultant is subject to non-procurement Debarment and Suspension Regulations implementing Executive Orders 12549 and 12689, 2 C.F.R. pt. 180 (2 C.F.R. §200.212). The Agreement is a covered transaction for the purposes of C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of its principals (defined at 2 C.F.R. §180.995) or its affiliates (defined at 2 C.F.R. §180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. §180.935).

The Consultant must comply 2 C.F.R. 180, sub-part C and 2 C.F.R. pt. 3000, sub-part C and must include a requirement to comply with these regulations in any lower-tier covered transaction it enters into.

Execution of the Agreement is a material representation of fact relied upon by the City. If it is later determined that the successful Consultant did not comply with 2 C.F.R. pt. 180, sub-part C and 2 C.F.R. pt. 3000, sub-part C in addition to remedies available to the State of South Carolina Emergency Management Division and the City of Sumter, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The Consultant agrees to comply with the requirements of 2 C.F.R. pt. 180, sub-part C and 2 pt. 3000, sub-part C during the duration of the project and throughout the period of any Agreement that may arise from this project.

The Consultant further agrees to include a provision requiring such requirements in its lower-tier covered transactions.

The Consultant shall notify the City in accordance with the notice provisions contained herein if the Consultant or a subcontractor becomes suspended or debarred during the term of the Agreement. The Agreement may be terminated in accordance with Termination of Agreement.

## **BB. Term of Agreement**

The Agreement shall extend for a period of one (1) year unless earlier terminated by either party as provided herein. The Agreement shall expire at the end of the term unless an extension has been requested by either party and agreed to in writing by both parties prior to the expiration of the term.

The decision whether to extend the contract, upon written request, shall be in the sole and exclusive discretion of the party receiving the request and neither party shall be under any obligation to agree to an extension of the initial term or any additional term.

## **CC. Termination of Agreement**

The City may terminate the Agreement at any time upon any of the following grounds:

1. Non Appropriation. Failure by the City to appropriate funds for the performance of any of the services required in this Agreement in any annual budget.
2. Termination of Agreement for Cause. If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner any obligation under the Agreement, or if the Consultant shall violate any of the covenants, agreements, or stipulations of the Agreement, the City shall thereupon have the right to terminate the Agreement by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data studies, surveys, and reports prepared under the Agreement shall become the property of the City.

Notwithstanding the above, the Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by the Consultant and the City may withhold any payments to the Consultant until such time as the exact amount of damages due to the City from the Consultant is determined.

3. Termination for Convenience of the City. The City may terminate the Agreement at any time by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. In that event, all finished or unfinished documents and other material as described in "Access to Records" herein shall, at the option of the City, become its property.

The City shall, at its sole option and discretion, have the right to terminate this contract for any reason whatsoever. A termination for default under the Agreement, if wrongfully made, shall be treated as a termination for convenience under this clause.

4. Force Majeure.
5. Upon expiration of the term of this Agreement.
6. By mutual agreement.

#### **DD. Use of Recovered Materials**

1. The Consultant shall comply with Section 6002 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (2 C.F.R. §200.322). In performance of the Agreement, the Consultant shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired:
  - a. competitively within a timeframe providing for compliance with the Agreement's performance schedule;
  - b. meeting the Agreement's performance requirements; or
  - c. at a reasonable price.
2. Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <http://www.epa.gov/cpg/products.htm>.

#### **EE. Whole Agreement**

The Agreement represents the entire Agreement between the City and the Consultant and supersedes all prior communications, negotiations, representations, or agreements, either written or oral. Only written Amendments signed by both the City and the Consultant may amend the Agreement.

#### **FF. Miscellaneous**

1. Nothing in the Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.
2. In the event there are any disagreements between the City and the Consultant with regard to any of the requirements, specifications, or interpretation of the Agreement, the Consultant agrees to defer to the reasonable interpretations of the City as from time to time may be made by the City. Ambiguities in the terms of the Agreement, if any, shall not be construed against the

City. The Agreement must meet the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II.

3. The Agreement is subject to City Council approval.
4. The Consultant shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.
5. The Consultant acknowledges that 31 U.S.C. chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Consultant's actions pertaining to the Agreement.
6. The Uniform Rules authorize the Federal Emergency Management Agency (FEMA) to require additional provisions for non-federal entity agreements. FEMA, pursuant to its authority, requires the following;
  - a. To be eligible for FEMA assistance under the City's FEMA grant or cooperative agreement, the cost of the change, modification, contract amendment, or constructive change must be allowable, allocable, with the scope of its grant or cooperative agreement, and reasonable for the completion of the project scope in accordance with the Agreement.
  - b. The Consultant and their successors, transferees, assignees, and subcontractors (in accordance with Section U., Ownership of Project Documents, herein) acknowledge and agree to comply with applicable provisions governing department and FEMA access to records, accounts, documents, information, facilities, and staff (per department of Homeland Security standards terms and conditions, v. 3.0 ¶ XXVI. (2013) and (in accordance with Section. A., Access to Records, herein.)